

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
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Gary K. Michelson, M.D.)	
)	
Serial No.: (Con. of 10/253,678))	Group Art Unit: (3731)
)	
Filed: September 17, 2003)	Examiner: (D. Reip)
)	
For: Bone Plate Having a Portion)	
Adapted to Overlie a Fastener)	

Mail Stop: Patent Application
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REQUEST FOR INTERFERENCE UNDER 37 C.F.R. § 1.607

Applicant hereby requests an interference with U.S. Patent No. 6,605,090 to Trieu et al. (hereinafter, "Trieu '090") pursuant to 37 C.F.R. § 1.607(a). A proposed count is attached hereto.

Claim 10 of Trieu '090 corresponds to claim 1 of the proposed count. Claim 1 of the present application also corresponds to claim 1 of the proposed count.

Claim 1 of the proposed count is supported in Applicant's disclosure. For example, Applicant discloses an orthopedic device including a bone plate 2 (Specification, page 51, line 6) having at least one opening 502 (Specification, page 59, line 2; Figs. 71, 77) therethrough and formed of a polymeric material. An example of a bioresorbable material includes a polymeric material disclosed by Applicant for forming

the bone plate that is polyglyconate, which is supported at least in claims 19, 44, 70, 97, 140, 191, 231, 272, 316, 364, and 418 as originally filed in Application No. 09/022,293, which is incorporated by reference in the present application on page 1, lines 6-9 and from which the present application claims priority.¹ MPEP § 2163(I) states that “[i]t is now well accepted that a satisfactory description may be in the claims or any other portion of the originally filed specification.” (MPEP § 2163(I), page 2100-159, col. 2 (February 2003)). Applicant amended the specification of the present application to include the subject matter of the aforementioned claims in a Preliminary Amendment being filed concurrently herewith.

The orthopedic device disclosed by Applicant also includes a fastener 170 (Specification, page 58, lines 6-13; Fig. 53) with a first end defining a head 172 having a surface 180 configured to engage a drive tool 1000 (Specification, page 57, lines 2-4; Fig. 80) and an opposite, second end defining a tissue engaging portion 176, 182 (Specification, page 58, lines 6-13; Figs. 53 and 80). The fastener disclosed by Applicant is disposed within the at least one opening 502 of the bone plate. (See, e.g., Figs. 77 and 79).

The bone plate disclosed by Applicant includes a permanently attached locking element 202, 522. (Specification, page 32, lines 2-4 and Figs. 18, 19, 78, and 79). As set forth in the specification, the locking element “can be formed as a part of the plate during the manufacturing process of the plate.” (Specification, page 32, lines 2-4). Locking element 202, 522 is an integral and non-removable part of the plate. A portion of the locking element 202, 522 disclosed by Applicant overlays a portion of the surface

¹ Due to a typographical error, the word “polyglyconate” was misspelled as “polygyconate” in the ‘293 application as recognized by the Examiner during the prosecution of the ‘293 application. Applicant

of the head of the fastener disclosed by Applicant. (See, e.g., Specification, page 60, lines 6-7; and Fig. 79). The tissue engaging portion 176, 182 of the fastener 170 disclosed by Applicant projects from the surface of the head 172 of the fastener. (See, e.g., Specification, page 58, lines 6-13; Figs. 53 and 80).


Applicant submits that the subject matter of claim 1 is fully supported by Applicant's original disclosure. The Examiner is requested to declare an interference between the present application and U.S. Patent No. 6,605,090.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1066.

Respectfully submitted,

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corrected the typographical error following the Examiner's observation.

PROPOSED COUNT UNDER 37 C.F.R. § 1.607(a)(2)

1. An orthopedic device comprising:

a bone plate having at least one opening therethrough and formed of a polymeric material;

a fastener comprising a first end defining a head having a surface configured to engage a drive tool and an opposite, second end defining a tissue engaging portion, said fastener disposed within the at least one opening wherein a portion of the bone plate overlays a portion of said surface and the tissue engaging portion projects therefrom.